

The Patent Office, in its final rejection, objected to the specification as containing numerous acronyms and terms of questionable definitions such as "half-pipe" and "full-pipe." Other objections were raised with respect to the consistency of the drawings relative to the specification, and even consistency within the specification. The Patent Office invited Applicant to correct these errors with the admonition that no new matter be entered.

The rejection of the claims was premised on the first paragraph of 35 U.S.C. § 112, and specifically as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Support for this rejection was that the term "IP packet" was not defined and the aforementioned objections to the specification. Finally, the Patent Office argued that the claim language was not disclosed in the specification.

Applicant, in response, amended the specification, providing consistency amongst the elements and expanding the acronyms as requested by the Patent Office. Applicant further responded to the merits of the § 112 rejection by pointing to the places in the specification where the subject matter of the claims could be located, as well as raising other issues with respect to the § 112 rejection.

The Patent Office essentially ignored the entire response in the Advisory Action stating that the response was not fully responsive because two elements were not illustrated in the drawings, and the terms "half-pipe" and "full-pipe" were not defined. Further, the amendments to the specification were alleged to be new matter. Completely lacking from this Advisory Action was any comment on the merits of the response to the § 112 rejection.

Applicant initially notes that the network device 12, the collector 52d, and the terms "half-pipe" and "full-pipe" are not used in the claims, and with the exception of the term "IP packet," none of the disputed acronyms are used in the claims. **Thus, the objections to the specification appear to be completely unrelated to the § 112 rejection,** and the failure to address the response to the § 112 rejection needlessly wastes Applicant's resources as the case has not been advanced by the Patent Office's failure to address Applicant's response.

Further, with respect to the particular elements for which a lack of response is noted, Applicant responds. Initially, the Patent Office asserts that no network device 12 is illustrated in the drawings. Network devices 12a-12h are illustrated in Figure 1, thus satisfying the requirement that a network device 12 is illustrated in the drawings. The fact that no individual

device is labeled 12 is not material to the understanding of one of ordinary skill in the art that each of the devices 12a-12h is in fact a network device 12. As the term "network device" is never used in the claims, objecting to its presence or absence in the drawings is at heart a specious argument advanced so as to avoid having to address the underlying § 112 issue.

The Patent Office then asserts that a collector 52d is not illustrated. Applicant again respectfully traverses this assertion. Figure 2, while not a model of clarity, has a router/switch 42a above which is positioned a collector 52a. Likewise, element 42g has a collector 52g positioned above it. Implicit in the drawings, and readily apparent to anyone of ordinary skill in the art, each of the elements 42 has a corresponding collector 52 positioned above it. As the term "collector" is never used in the claims, objecting to its presence or absence in the drawings is irrelevant to a determination of patentability.

The Patent Office then asserts that "half-pipe" and "full-pipe" are not defined. Again, this is quite simply irrelevant as these terms are not used in the claims, and are merely illustrative, descriptive text in the body of the specification.

The Patent Office is providing a disservice to Applicant by being hung up on terms that are not used in the claims, and nitpicking over the specification. Applicant has attempted to comply with the requested changes that the Patent Office issued, only to be stymied with a new matter rejection, which at its heart appears to be an obfuscating tactic to avoid having to address the remarks to the § 112 rejection advanced by the Patent Office.

With respect to the term "IP," "IP" is extremely well known to mean Internet Protocol.

Despite this inappropriate handling by the Patent Office, Applicant includes herein a copy of pages from two technical dictionaries, both with publication dates of 1999, with the acronyms and terms defined therein. A few terms are missing, but Applicant reminds the Patent Office that the burden is on the Patent Office to show that these undefined terms rise to the level of not having possession of the invention. In light of these definitions and the fact that technical dictionary has a date prior to the filing of the present application, it is clear that each term that the Patent Office has questioned is well known in the art.

By focusing on these irrelevant issues, the Patent Office has apparently felt justified in ignoring Applicant's remarks relative to the § 112 rejection. Applicant summarily repeats them and requests that the Patent Office advance the application to issuance rather than quibble over irrelevant terms.

1) The burden is on the Patent Office to prove that Applicant was not in possession of the invention at the time of filing. MPEP § 2163.

2) Claims 2-5 were present at filing, and are essentially unamended, thus indicating that the subject matter of those claims was in the possession of the inventor at the time of filing.

3) The subject matter of claims was described in the summary and at pages 49-60 of the specification.

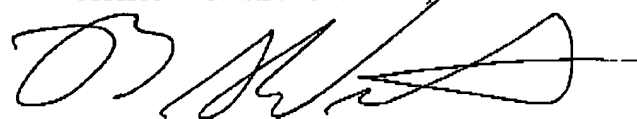
4) The standard for review is one of ordinary skill in the art, and one of ordinary skill in the art would know what the acronyms mean and that the claims were described in the specification.

Applicant requests that the objections to the specification be withdrawn in light of the accompanying proof that the terms were well known at the time of filing. Applicant further requests that the claims be allowed at the Examiner's earliest convenience because the § 112 rejection is unsupported.

Respectfully submitted,

WITHROW & TERRANOVA, P.L.L.C.

By:



Benjamin S. Withrow
Registration No. 40,876
P.O. Box 1287
Cary, NC 27512
Telephone: (919) 654-4520

Date: August 2, 2002
Attorney Docket: 7000-174

CERTIFICATE OF TRANSMISSION	
I HEREBY CERTIFY THAT THIS DOCUMENT IS BEING TRANSMITTED VIA FACSIMILE ON THE DATE INDICATED BELOW TO:	
Examiner: <u>Rudy, Andrew J.</u> Art Unit: <u>3627</u> Fax: <u>703-872-9327</u>	
<u>Kelly Fanon</u>	Name of Sender
<u>[Signature]</u>	Signature
<u>8/2/02</u>	Date of Transmission